

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOSEPH KELLY,

Petitioner,

v.

WARDEN SMITH, *et al.*,

Respondents.

Case No. 3:14-cv-00685-MMD-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner.

Petitioner has filed a motion to proceed *in forma pauperis*. (Dkt. no. 1.) Based on the information regarding petitioner's financial status, the Court finds that the motion to proceed *in forma pauperis* should be granted. The Court has reviewed the habeas petition, and it shall be served on respondents.

Petitioner has filed a motion for the appointment of counsel. (Dkt. no. 1-3.) Pursuant to 18 U.S.C. § 3006A(2)(B), the district court has discretion to appoint counsel when it determines that the "interests of justice" require representation in a habeas corpus case. Petitioner has no constitutional right to appointed counsel in a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is within the Court's discretion. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert.*

1 *denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert.*
2 *denied*, 469 U.S. 838 (1984). The petition on file in this action is sufficiently clear in
3 presenting the issues that petitioner wishes to bring. The issues in this case are not
4 complex. Counsel is not justified in this instance. The motion for appointment of counsel
5 is denied.

6 It is therefore ordered that the application to proceed *in forma pauperis* (dkt. no.
7 1) is granted.

8 It is further ordered that the Clerk of the Court shall file and electronically serve
9 the petition upon the respondents.

10 It is further ordered that respondents shall have forty-five (45) days from entry of
11 this order within which to answer, or otherwise respond to, the petition. In their answer
12 or other response, respondents shall address all claims presented in the petition.
13 Respondents shall raise all potential affirmative defenses in the initial responsive
14 pleading, including lack of exhaustion and procedural default. Successive motions to
15 dismiss will not be entertained. If an answer is filed, respondents shall comply with the
16 requirements of Rule 5 of the Rules Governing Proceedings in the United States District
17 Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have forty-five (45)
18 days from the date of service of the answer to file a reply.

19 It is further ordered that any state court record exhibits filed by respondents shall
20 be filed with a separate index of exhibits identifying the exhibits by number or letter. The
21 hard copy of all state court record exhibits shall be forwarded, for this case, to the staff
22 attorneys in the Reno Division of the Clerk of Court.

23 It is further ordered that, henceforth, petitioner shall serve upon the Attorney
24 General of the State of Nevada a copy of every pleading, motion, or other document he
25 submits for consideration by the Court. Petitioner shall include with the original paper
26 submitted for filing a certificate stating the date that a true and correct copy of the
27 document was mailed to the Attorney General. The Court may disregard any paper that
28 does not include a certificate of service. After respondents appear in this action,

1 petitioner shall make such service upon the particular Deputy Attorney General
2 assigned to the case.

3 It is further ordered that petitioner's motion for the appointment of counsel (dkt.
4 no. 1-3) is denied.

5 DATED THIS 8th day of May 2015.

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8 MIRANDA M. DU
9 UNITED STATES DISTRICT JUDGE
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